

ESTTA Tracking number: **ESTTA562773**

Filing date: **10/02/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198660
Party	Plaintiff Broadcom Corporation
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Date	10/02/2013
Attachments	Reply Motion in Support of Motions for Sanctions - BROC.783M.pdf(548149 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Broadcom Corporation,

Opposer,

v.

Broadchip Technology Group Ltd.,

Applicant.

Opposition No.: 91198660

Subject Mark: BROADCHIP

Application No.: 77/855,572

I hereby certify that this correspondence is being transmitted by electronic mail to the Trademark Trial and Appeal Board through its web site located at <http://estta.uspto.gov> on

October 2, 2013

(Date)

Susan M. Natland

**BROADCOM CORPORATION'S REPLY IN SUPPORT OF**  
**MOTION FOR SANCTIONS**

Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451

Dear Sir or Madam:

On September 13, 2013, Broadchip Technology Group Ltd., ("Applicant") filed what appears to be Applicant's Response to Opposer's Motion for Sanctions ("Applicant's Response") with the Trademark Trial and Appeal Board (the "Board") consisting of a cover letter as well as purported responses to Opposer's, Broadcom Corporation's ("Broadcom"), Interrogatories.

Not only were Applicant's responses to Broadcom's Interrogatories incomplete, deficient and non-compliant with Board rules and the Board Order dated August 9, 2013 ("Order"), but to date, almost a month after the deadline set forth in the Order, Applicant has still not: (i) provided any responses whatsoever to Broadcom's Requests for Admissions; (ii) produced any documents whatsoever in response to Broadcom's Requests for Documents and Things; or (iii) produced its

witnesses for oral deposition in response to Broadcom's properly noticed Depositions pursuant to the Order. Broadcom submits this Reply to Applicant's Response to clarify that Applicant continues to fail to comply with the Order.

Applicant's persistent non-compliance and flouting of the Board rules and Order further support Broadcom's Motion for Sanctions and that the Board should enter judgment in favor of Broadcom in this matter.

**I. SANCTIONS SHOULD BE ENTERED IN FAVOR OF BROADCOM DUE TO APPLICANT'S CONTINUED PERSISTENT DEFICIENCIES AND NON-COMPLIANCE**

On August 9, 2013, due to repeated and continuous failure by Applicant to respond to Broadcom's discovery requests and repeated refusals to produce properly noticed witnesses for deposition, the Board issued the Order, ordering Applicant to no later than September 8, 2013 (*i.e.*, thirty days from the date of the Order): (i) serve its responses, without objection, to Broadcom's written discovery (*i.e.*, Broadcom's Interrogatories, Requests for Production and Requests for Admissions); (ii) produce its documents; and (iii) produce its witnesses for oral deposition (collectively, "Discovery Requests").

Rather than comply with the Order, on September 13, 2013, five days after the deadline to comply with the Order, Applicant filed a cover letter and deficient and incomplete responses to Broadcom's Interrogatories with the Board. As with prior filings of Applicant, and despite repeated reminders by the Board (including those in the Order)<sup>1</sup>, Applicant did not serve a copy of its September 13, 2013 filing with the Board on Broadcom. However, on September 16, 2013,

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<sup>1</sup> See also Board Orders dated September 20, 2011 and October 17, 2011. D.I. #6 and #8.

Broadcom received the deficient and incomplete responses to Broadcom's Interrogatories from Applicant without the cover letter and without any date or signature.

The responses to Broadcom's Interrogatories sent by Applicant to Broadcom were not prepared according to the Board and Federal rules. They were undated, unsigned, and unverified. Moreover, again, despite repeated reminders from the Board, Applicant did not provide a proof of service in connection with the same. Attached hereto as Exhibit A is a true and correct copy of the responses to Broadcom's Interrogatories which Broadcom's counsel received from Applicant on September 16, 2013, as well as the envelope for the same showing a postal date of September 12, 2013, which alone is four days after the deadline in the Order. The envelope bears a return address of 1008 Strayer Drive, San Jose, California 95129.

There is no question that after months of good faith attempts by Broadcom to resolve the discovery issues, Applicant's actions continue to fall well short of Applicant's obligations as set forth in the Order and underscore Applicant's continued flouting of the Board's rules and authority in this matter. These actions, combined with Applicant's prior repeated failure to meet required deadlines despite reminders and the good faith efforts of Broadcom, supports sanctions against Applicant including the entry of judgment in favor of Broadcom.

## **II. APPLICANT HAS FAILED TO COMPLY WITH A VAST MAJORITY OF ITS OBLIGATIONS IN THE ORDER**

Notably, Applicant has completely failed to comply with the following obligations pursuant to the Order: (i) serve its responses, without objection, to Broadcom's Requests for Admissions; and (ii) produce its documents.

In addition, rather than produce its witnesses for oral deposition as required under the Order, Applicant disregards the Order. Instead, Applicant's cover letter submitted to the Board on September 13, 2013 requested that the deposition of Mr. Dai be held in China and requested

that if such deposition is going to be held in the U.S., that Broadcom pay the travel costs to have Mr. Dai go to the U.S. Moreover, Applicant's letter makes no mention of the properly noticed deposition of Kathy Geng, Secretary of Applicant, or the properly noticed deposition of Applicant's FRCP 30(b)(6) designee.

The depositions ordered by the Board in response to Broadcom's Motion to Compel filed November 23, 2011 ("Broadcom's Motion to Compel") should be required to occur as noticed, in Northern California (i.e., in Palo Alto, California which is 45 miles from Applicant's business address). Broadcom's Motion to Compel, D.I. #14 p. 12. Since May 12, 2009, Applicant has operated an active California subsidiary under the name Broadchip Semiconductor Inc. with an address at 1008 Strayer Drive, San Jose, CA 95129. *Id.* Applicant's President, Mr. Dai (aka Zhongwei Dai), and Secretary, Ms. Geng (aka Wen Geng), own the personal residence located at the 1008 Strayer Drive, San Jose, California address. *Id.* The 1008 Strayer Drive, San Jose, California address is the personal address of record and apparent full time residence for Ms. Geng. Ms. Geng is the appointed representative for Applicant in this opposition, and 1008 Strayer Drive is listed as Applicant's correspondent address. *Id.* Applicant's internet domain name, [www.broadchip.com](http://www.broadchip.com), is registered to Zhongwei Dai, also in Sunnyvale, California. *Id.* Applicant's website states that its company was "founded in Silicon Valley, USA by a group of entrepreneurs," apparently referring to Mr. Dai and Ms. Geng. *Id.* Moreover, Mr. Dai himself proposed a deposition in Northern California (before he reneged on the proposed date). *Id.* Moreover, Applicant's deficient and incomplete responses to Applicant's Interrogatories were sent with a return address of 1008 Strayer Drive, San Jose, California 95129. See Exhibit A. Finally, both Ms. Geng and Mr. Dai are U.S. citizens. *Id.*, Applicant's Response to Broadcom's Interrogatory No. 17.

Having invoked the Board's jurisdiction itself, having provided a U.S. location as its headquarters and address of record, and owning property and a residence here, Applicant and its Officers should not be permitted to play the types of financial games suggested in Applicant's September 13, 2013 cover letter to the Board.<sup>2</sup> See, *HighBeam Marketing, LLC v. Highbeam Research, LLC*, 85 USPQ2d 1902 (TTAB 2008); *Re/Max Int'l, Inc. v. Singh*, 2010 WL 147899 (N.D. Cal. 2010); *Lorillard Tobacco Co. v. California Imports, LLC*, 2011 WL4625953 (E.D. Va. 2011).

**III. EVEN THE LIMITED ACTION TAKEN BY APPLICANT IN RESPONSE  
TO THE ORDER IS INCOMPLETE AND NON-COMPLIANT WITH THE  
ORDER AND BOARD RULES**

Further, although Applicant responded to Broadcom's First Set of Interrogatories Nos. 1-50, they were undated, unsigned, unverified and mailed and received after the deadline set by the Board in the Order. In addition, they are clearly not complete<sup>3</sup> as required in the Order and contain numerous misstatements of fact<sup>4</sup>.

Finally, Broadcom points out that not only has Applicant provided deficient, incomplete and inaccurate responses to Broadcom's Interrogatories, but as of the filing of this Reply (and almost one month past the due date set in the Order), Broadcom has not received Applicant's

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<sup>2</sup> Courts regularly require U.S. depositions under circumstances far less compelling than those present here. See, e.g., *HighBeam Marketing, LLC v. Highbeam Research, LLC*, 85 USPQ2d 1902 (TTAB 2008); *Re/Max Int'l, Inc. v. Singh*, 2010 WL 147899 (N.D. Cal. 2010); *Lorillard Tobacco Co. v. California Imports, LLC*, 2011 WL4625953 (E.D. Va. 2011).

<sup>3</sup> For exemplary purposes only, and without waiving any of Broadcom's rights regarding other responses, Applicant's responses to Interrogatory Nos. 15, 16, 17, 25, 26, 37, 49 are clearly incomplete and not responsive, contrary to the Order.

<sup>4</sup> The degree of misstatements is specifically evident in Applicant's responses to Interrogatories Nos. 15, 22, 25, 29-31 wherein Applicant implies that it provided Broadcom with free samples and that the samples were used by Broadcom. However, as supported by the Declaration of Evan Hawrysh in Support of Broadcom's Motion to Compel, Broadcom has never received free samples of Applicant's products from anyone including Applicant itself. Rather, Applicant's product was purchased by an outside vendor, Evan Hawrysh, and delivered to "Evan Analytical Group" via a third party distributor, World Micro, and not sent to Broadcom directly. The purchase was specifically for investigative purposes and it was not used by Broadcom. Motion to Compel, Hawrysh Decl., D.I. #9.

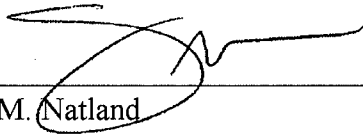
required responses to Broadcom's First Set of Requests for Admissions or Broadcom's First Set of Requests for Production of Documents and Things, nor has Applicant produced its documents or witnesses for oral deposition. This is despite the Board's Order granting Broadcom's Motion to Compel. Applicant continues to ignore Broadcom's Discovery Requests and the Board's Order.

Applicant's blatant failure to take the required action as clearly set forth in the Order, combined with its continued complete failure to meet required deadlines despite a Board Order and the good faith efforts of Broadcom, supports the entry of judgment in favor of Broadcom in this matter.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 2, 2013

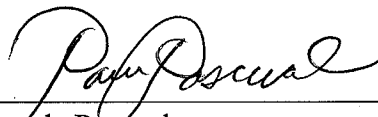
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Attorneys for Opposer, Broadcom Corporation

16378710/100213

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **BROADCOM CORPORATION'S**  
**REPLY IN SUPPORT OF MOTION FOR SANCTIONS** upon Applicant's by depositing one  
copy thereof in the United States Mail, first-class postage prepaid, on October 2, 2013 addressed  
as follows:

Kathy Geng  
Secretary  
Broadchip Technology Group Ltd.  
1008 Strayer Drive  
San Jose, CA 95129

  
\_\_\_\_\_  
Pamela Pascual  
Trademark Paralegal

16378710/100213



# EXHIBIT A

## Answers to Interrogatories from Opposer

1. Interrogatory No. 1: The English language is the world wide used language for communications. Even we are targeting the ASIA marketing right now, the English language is the basics for communications with customers. Of course, we will enter into European and US market in the future if the condition permits.
2. Interrogatory No. 2: Some of the founders are from Silicon Valley where we come up with the idea of setting up a fables design house in China.
3. Interrogatory No. 3: JERRY DAI
4. Interrogatory No. 4: We first know Opposer and Opposer's Mark in 1999 when it went IPO.
5. Interrogatory No. 5: We set up Broadchip Semiconductor Inc. In 2010, 2 officers: Jerry Dai and Wen Geng. No operation so far.
6. Interrogatory No. 6:

Jerry Dai: MSEE from Texas A&M University,  
2007- Now, CEO, Broadchip Technology  
2005-2007, Design Director, Pericom Technology, USA  
1999-2005, Principle MTS, Maxim Integrated Products, USA  
1997-1999, Senior Design Engineer, AKM, USA

Kathy Geng: MBA from California State University  
2007 - Now, Secretary/Finance/HR, Broadchip Technology

Dr. Robin Luo PH.D TSINGHUA UNIVERSTY, CHINA

--- Marketing&AE

2009- Now, Senior Marketing and AE Director, Broadchip  
2005-2007, FAE Director, Pericom Technology, USA  
2001-2005, FAE Manager, Zarlink Semiconfuctor, USA

Mr. Andrew Chan: MS, Santa Clara University

--- Engineering (ASIC)

2010 - Now, Senior Design Director, Broadchip  
2001- 2010, Principle MTS, Maxim Integrated Products, USA  
1997-2001, Senior Design Engineer, Phillips Semi, USA

Mr. Eric Yu: BSEE, ZheJiang University, China

--- Sales

2012 - Now, Senior Sales Director, Broadchip  
2007 - 2012, Senior Sales Manager, MEMSIC, China  
2003- 2007, Sale manager, Power Integration, China

7. When we first apply for trade mark in China. Our advisor suggested us to register the trade mark in US to protect our trade mark in US and world wide.
8. That address is used for registering the BROADCHIP SEMICONDUCTOR INC.
9. It is owned by ZHONGWEI DAI. It is a rental property.

10. Don't know this address
11. It is the personal mail box for ZHONGWEI DAI and WEN GENG
12. Don't know this phone number.
13. BROADCHIP SEMICONDUCTOR INC. intent to use for future business
14. We paid the advisor in US to file the document. We don't review any third party US trade mark applications and registration. The advisor may review them.
15. The opposer's RD department contacted us to use our product and we provide the sample to them.
16. 广芯电子技术(上海)有限公司 ---- Registered in Shanghai, China  
BROADCHIP TECHNOLOGY GROUP LTD. --- Registered in BVI  
BROADCHIP SEMICONDUCTOR INC. --- Registered in US
17. JERRY DAI: US citizen  
Wen Geng US citizen  
Hong Xu China  
Xi Zhao China
18. ZHONGWEI(JERRY) DAI , WEN(KATHY) GENG --- Husband and wife.
19. 14595 W. Lisbon Lane, Surprise, Arizona -- ZHONGWEI(Jerry) Dai  
1008 Strayer Dr. San Jose, CA 95129, ZHONGWEI(JERRY) DAI , WEN(KATHY) GENG
20. 广芯电子技术(上海)有限公司 ---- Registered in Shanghai, China  
BROADCHIP TECHNOLOGY GROUP LTD. --- Registered in BVI  
BROADCHIP SEMICONDUCTOR INC. --- Registered in US
21. We keep developing the innovative analog and mixed-signal Integrated Circuits products which may be used by the customers in US.
22. Some customers are contacting us directly to use our products like the OPPOSER, QUALCOMM, TI, etc. We are providing the samples to them.
23. No operation so far in US at the date of filing Application
24. 广芯电子技术(上海)有限公司: 33 LESHAN ROAD, SUITE 305, SHANGHAI, CHINA  
BROADCHIP SEMICONDUCTOR INC.: 1008 Strayer Dr. San Jose, CA 95129  
BROADCHIP TECHNOLOGY GROUP LTD.
25. We provided samples to US customers: OPPOSER, QUALCOMM etc.
26. All of them are just family visit.
27. We applied our trade-mark to the US Trademark Office to protect our trademark and for future use.
28. August 1, 2007 is the date for our office opening in Shanghai.
29. We ship some samples to US customers as of Opposer and Qualcomm etc.
30. We first got inquiry from Opposer's RD group about our product to be used in Opposer's system reference design. Later we provide some free samples to them. The reference design finally went to their customers.
31. Please see the answer to interrogator No. 30, the Opposer exposed our trademark and product to the third party and customer in the US. We don't know their name.
32. We ship our products to the customers in Asia, mostly in China. We don't know if there products be shipping to US or any other places. They don't disclose their end-customers to us.
33. We don't do any promotion and advertisement so far in US

34. We registered the websites www.broadchip.com through www.yahoo.com
35. We pay the advisor to do the filing. We don't do any of these conductivities.
36. We promoted our products through our websites, through the Chinese magazine in China and through the distributors
37. We sell our products through distributors: ASIACOM, MORSUN, etc..
38. We don't have detail number of units sold so far. We don't have any sales and revenue from US market as we know so far.
39. Chinese magazine, website, etc.
40. At that time, we no longer hired the lawyer to handle the situation. We have to have more time to answer all these questions.
41. Apply for trade mark and register the company BROADCHIP SEMICONDUCTOR INC
42. So far, provide samples to US customers, no sales yet in US.
43. No distributors in US so far.
44. We are developing the broad range of analog and mixed signal IC chipsets. That comes up with the name BROADCHIP, and we are keeping working on this target.
45. We are developing the broad range of high performance and high quality analog and mixed signal IC chipsets. That kind product might be used by the customers in US. Since US the most important market in the world.
46. So far haven't do any of these activities.
47. We haven't have any channels doing these activities
48. No so far
49. We get the notice from Trademark office about the opposition and we hired Landrum & Company, Inc to handle the case. Later on we can not support all the costs for this case. So we decide to handle the case by ourselves. Jerry Dai is the person to have the knowledge and all the documents relating thereto.
50. BROADCHIP TECHNOLOGY GROUP LTD. is the holding company. 广芯电子技术（上海）有限公司 is the entity for main operation. Broadchip Semiconductor Inc. is registered under Jerry Dai's name for future use.

Respectfully Submitted

Broadchip Technology Group Ltd

BY \_\_\_\_\_  
Zhongwei (Jerry) Dai  
33 LeShan Road, Suite 305  
Shanghai, China, 200030  
86-21-64472385

Jerry Dan

1008 Stager Dr.

San Jose CA 95129

Knobbe Martens <Intellectual Property Co  
Susan Natland

2040 Main Street, 14th Floor

Irvine, CA 92614



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